

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. '08-CV-01374 BNB
(To be supplied by the court)

OSIEL RODRIGUEZ

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF
DENVER, COLORADO

v.

JUL - 8 2008

GREGORY C. LANGHAM
CLERK

GENERAL COUNSEL, FOR THE,
FEDERAL BUREAU OF PRISONS.

_____, Defendant(s).

(List each named defendant on a separate line.)

PRISONER COMPLAINT

A. PARTIES

1. DSIEL RODRIGUEZ, 21136-D18, USP FLORENCE-MAX, 5880
(Plaintiff's name, prisoner identification number, and complete mailing address)

STATE HIGHWAY 67 SOUTH, P.O. BOX 8500, FLORENCE, CO
81226-8500

2. GENERAL COUNSEL, FOR THE FEDERAL BUREAU OF PRISONS,
(Name, title, and address of first defendant)

320 FIRST ST. N.W., Room 841, WASHINGTON, DC 20534

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? ☐ Yes ☒ No (CHECK ONE). Briefly explain your answer:

DEFENDANT IS A FEDERAL EMPLOYEE, ACTING UNDER

COLOR OF FEDERAL LAW.

3. N-A

(Name, title, and address of second defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? ☐ Yes ☐ No (CHECK ONE). Briefly explain your answer:

4. N-A

(Name, title, and address of third defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? ☐ Yes ☐ No (CHECK ONE). Briefly explain your answer:

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to: (check one if applicable)

___ 28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

___ 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional or alternative statutes (if any):

5 U.S.C. § 552 (a) (6) (C) (i), AGENCIES/DEFENDANT'S VIO-
LATION/FAILURE TO COMPLY WITH F.O.I.A. TIME LIMIT
PROVISION

C. NATURE OF THE CASE

BRIEFLY state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled "C. NATURE OF THE CASE."

THE SUBJECT OF THIS SUIT IS F.O.I.A. REQUEST NO: 2008-01745. ON NOVEMBER 15, 2007, I MADE AN F.O.I.A. REQUEST TO THE GENERAL COUNSEL, FOR THE FEDERAL BUREAU OF PRISONS ("DEFENDANT"). I SENT REQUEST VIA CERTIFIED/REGISTERED MAIL — #7006 2760 0004 9613 3901. I RECEIVED NO RESPONSE TO MY REQUEST. ON JANUARY 18, 2008, I SENT THE DEFENDANT A LETTER INQUIRING AS TO THE STATUS OF MY REQUEST. SAID LETTER ALSO WENT UNANSWERED.

ON APRIL 16, 2008, I FILED AN APPEAL TO THE OFFICE OF INFORMATION AND PRIVACY. SAID OFFICE INFORMED ME THAT I COULD NOT APPEAL TO THEM DUE TO DEFENDANTS NOT RESPONDING TO MY REQUEST. SAID OFFICE ASSIGNED ME THE ABOVE F.O.I.A. REQUEST NUMBER, AND SAID THEY HAD FORWARDED MY APPEAL TO THE DEFENDANT.

ON MAY 15, 2008, I AGAIN SENT A LETTER TO THE DEFENDANT INQUIRING AS TO THE STATUS OF MY REQUEST. AGAIN MY PLEAS WENT

C. NATURE OF THE CASE

• CONTINUED •

UNANSWERED BY THE DEFENDANT.

DEFENDANTS FAILURE/REFUSAL TO ADDRESS MY REQUEST IN A TIMELY MANNER/AT ALL, HAS CAUSED THE COMPLAINT NOW BEFORE THE COURT. I HEREBY SEEK JUDICIAL REVIEW OF DEFENDANTS VIOLATION; AND PETITION FOR THE EXPEDITED RELEASE OF THE RECORDS/INFORMATION I REQUESTED IN MY ORIGINAL NOVEMBER 15, 2007, FREEDOM OF INFORMATION ACT REQUEST TO THE DEFENDANT.

D. CAUSE OF ACTION

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One: VIOLATION OF 5 U.S.C. § 522 (a) (6) (C) (i)

Supporting Facts: IN MY NOVEMBER 15, 2007, F.O.I.A. REQUEST TO THE DEFENDANT, I NOTED THAT THE INFORMATION I SOUGHT WAS IN THE CUSTODY/POSSESSION OF THE UNITED STATES PENITENTIARY ATWATER, IN ATWATER, CALIFORNIA. THIS IS STILL THE CASE.

DURING MY STAY IN U.S.P. ATWATER (MARCH 2004-MARCH 2007), THE EDUCATION DEPARTMENT/LAW LIBRARY LOANED-OUT PORTABLE TYPEWRITERS/WORD PROCESSORS CALLED "ALPHASMARKT". THESE ALPHASMARKTS WERE CHECKED-OUT VIA INMATE IDENTIFICATION CARD, AND WERE TO BE USED WHILE IN THE PRISONS LAW LIBRARY FOR THE PRODUCTION OF LEGAL WORK/PAPERS, PERSONAL LETTERS... ET CETERA. BEFORE AN INMATE LEFT THE EDUCATION DEPT, HE WAS TO RETURN THE ALPHASMARKT TO STAFF, IN EXCHANGE FOR HIS I.D. CARD.

IN CONJUNCTION WITH THIS LOAN-OUT PROGRAM, THE EDUCATION DEPT. WAS RUNNING A SOFTWARE PROGRAM CALLED "ALPHASMARKT MANAGER". THIS SOFTWARE PROGRAM RAN WITHOUT KNOWLEDGE OR CONSENT OF THE INMATE PRISON. POPULATION... AND SO ITS DETAILS WERE UNKNOWN TO US/THEM/ME.

THE ALPHASMARKT/ALPHASMARKT MANAGER SOFTWARE PROGRAM, WERE INTENDED FOR USE IN A STUDENT-TEACHER CLASSROOM SETTING; WITH THE TEACHER HAVING FULL ACCESS TO THE WORK STUDENTS PRODUCED ON THE ALPHASMARKT. TO FACILITATE THIS, ONE OF THE MAIN/STANDARD FEATURES OF SAID SOFTWARE PROGRAM ALLOWS THE USER (IN THIS CASE,

D. CAUSE OF ACTION

• CONTINUED •

U.S.P. ATWATER EDU. STAFF) UNFETTERED ACCESS INTO THE FILES/WRITINGS OF ALL ALPHASMARKT PLUGGED INTO ITS CENTRAL "ALPHA HUB" (PLEASE SEE EXHIBIT A - PERTINENT PAGES FROM THE ALPHASMARKT MANAGERS USERS GUIDE. SEE ALSO FOOTNOTE #1).

DUE TO EVENTS THAT ARE NOW THE SUBJECT OF A CIVIL LAW SUIT, I DISCOVERED THAT THE ALPHASMARKT MANAGER SOFTWARE PROGRAM WAS BEING ABUSED AS A LAW ENFORCEMENT/INFORMATION GATHERING TOOL; WITHOUT THE KNOWLEDGE/CONSENT OF THE U.S.P. ATWATER INMATE PRISON POPULATION — SEE FOOTNOTE #2.

THE FOLLOWING IS THE LIST OF INFORMATION I REQUESTED FROM THE DEFENDANT, IN MY ORIGINAL NOVEMBER 15, 2007, FREEDOM OF INFORMATION REQUEST:

#1 — IF THERE IS ANY DOUBT THAT THE BUREAU OF PRISONS USES THIS SOFTWARE PROGRAM, CONSIDER THE FOLLOWING: IN MY ATTEMPT TO OBTAIN A COPY OF THE ALPHASMARKT MANAGER USERS GUIDE, I.E., "EXHIBIT A", I WAS FERVENTLY BLOCKED FROM DOING SO BY THE B.D.P. INSTITUTION IN WHICH I AM NOW HOUSED. THE REASON CITED: "... IT CONTAIN[S] INFORMATION ABOUT A COMPUTER PROGRAM UTILIZED BY THE BUREAU OF PRISONS." (PLEASE SEE "EXHIBIT B" — ADMINISTRATIVE REMEDY RESPONSE DENYING ME ACCESS TO THE USERS GUIDE)

#2 — WITH EVIDENCE OF THIS IN HAND, I CONFRONTED U.S.P. ATWATER'S DIRECTOR OF EDUCATION (M. CHAVEZ), AND ASKED HIM: "WHO AUTHORIZED THAT OUR WRITINGS ON THE ALPHASMARKT BE SEARCHED/VIEWED/MONITORED/READ, AFTER WE RETURNED SAID WRITING INSTRUMENTS OVER TO EDU. DEPT. STAFF?" HE ADMITTED IT WAS HIM... AND OVER MY OBJECTIONS, INSISTED THAT HIS ACTIONS WERE LAWFUL BECAUSE OUR WRITINGS WERE NOT READ, SIMPLY "SEARCHED/SCANNED FOR CERTAIN KEY WORDS." (THIS CONVERSATION TOOK PLACE ON MONDAY, DEC 18, 2006, AT APPROX. 1:30pm; WHILE M. CHAVEZ MADE HIS ROUNDS IN "RANGE "A", OF THE SPECIAL HOUSING UNIT) NOTE: THE ABOVE-CITED CIVIL SUIT IS FILED IN THE U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA — OSIEL RODRIGUEZ, V. J. KARGIE, ET AL., CASE NO.: 1:08-CV-332-LJO-GSA-PC.

D. CAUSE OF ACTION

• CONTINUED •

- WHO OVERSAW AND/OR CARRIED-OUT FUNCTIONS ON THE ALPHASMARTS (VIA THE ALPHASMART MANAGER SOFTWARE PROGRAM) IN U.S.P. ATWATER'S EDU. DEPT. FROM THE DATE OF MARCH 2004 THROUGH MARCH 2007?
- AS THE ALPHASMART/ALPHASMART MANAGER SOFTWARE PROGRAM WERE NOT INTENDED FOR USE IN A PRISON SETTING; WERE THERE ANY 4TH AMENDMENT PROTECTION(S) IN PLACE, TO ENSURE THAT THE ABOVE-DESCRIBED INVASIONARY FEATURES OF SAID PROGRAM WERE NOT ABUSED BY EDU. DEPT./INTELLIGENCE STAFF (I.E, USED AS A LAW ENFORCEMENT/INFORMATION GATHERING TOOL) AGAINST THE INMATE PRISON POPULATION?
- WAS THERE EVER A DOCUMENTED EFFORT MADE BY U.S.P. ATWATER/EDU. DEPT. STAFF, TO INFORM THE INMATE PRISON POPULATION THAT THEIR WRITINGS ON THE ALPHASMART WAS SUBJECT TO MONITORING — VIA USE OF THE ALPHA SMART MANAGER SOFTWARE PROGRAM — AND COULD BE USED AGAINST THEM? OR IN THE ALTERNATIVE; WAS THERE A DOCUMENTED/CONCENTRATED EFFORT, TO CONCEAL THE INVASIONARY EFFECTS OF THIS PROGRAM FROM THE INMATE PRISON POPULATION?
- THE RELEASE OF ANY/ALL INTELLIGENCE INFORMATION/DOCUMENTS GENERATED FROM MY PERSON BECOMING THE TARGET OF AN INVESTIGATION (RESULTING FROM MY USE OF AN ALPHASMART WORD PROCESSOR/TYPEWRITER), FROM THE DATES OF APRIL 8—11, 2006.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ☒ Yes ☐ No (CHECK ONE). If your answer is "Yes," complete this section of the form. If you have filed more than one lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

1. Name(s) of defendant(s) in prior lawsuit: OSIEL RODRIGUEZ
V. J. KARGE, ET. AL.
2. Docket number and court name: 1:08-CV-332-LJO-GSA-PC
U.S. DIST. COURT - EASTERN DIST. OF CALIFORNIA
3. Claims raised in prior lawsuit: PRISON STAFFS VIOLATION OF 1ST/4TH
& 5TH AMENDMENT RIGHTS
4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?): FILED ON MARCH 10, 2008 —
• STILL PENDING
5. If the prior lawsuit was dismissed, when was it dismissed and why? N-A
6. Result(s) of any appeal in the prior lawsuit: N-A

F. ADMINISTRATIVE RELIEF

1. Is there a formal grievance procedure at the institution in which you are confined?
☒ Yes ☐ No (CHECK ONE). THIS COMPLAINT HAS NOTHING TO DO
WITH THE PRISON GRIEVANCE PROCEDURE

2. Did you exhaust available administrative remedies? ☒ Yes ☐ No (CHECK ONE).

NOTE: INASMUCH AS THE DEFENDANT VIOLATED RULES SET OUT IN THE
F.O.I.A. STATUTE. ONCE DEFENDANT DID NOT RESPOND TO MY
REQUEST, THE WAY WAS CLEARED FOR JUDICIAL REVIEW —
SEE 5 U.S.C. § 552 (2) (b) (C) (i).


E. PREVIOUS LAWSUITS

• CONTINUED •

1. OSIEL RODRIGUEZ
v.
JANICE G. MCLEOD, ET.AL.

2. 1:08-CV-00184-LJO-GSA
U.S. DIST. COURT-EASTERN DIST. OF CALIFORNIA

3. AGENCY/DEFENDANTS DID NOT PROVIDE
F.O.I.A.-REQUESTED MATERIAL

4.  FILED FEBRUARY 7, 2008
• STILL PENDING

5. N.A

6. N.A

G. REQUEST FOR RELIEF

State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

I REQUEST THAT THE DEFENDANT PROVIDE ME THE INFORMATION I REQUESTED IN MY ORIGINAL NOV 15, 2007, F.O.I.A. REQUEST (AS DESCRIBED HEREIN).

HAD THE DEFENDANT RESPONDED TO MY ORIGINAL REQUEST, I WOULD NOT NOW BE SEEKING JUDICIAL REVIEW. I THEREFORE REQUEST THAT THE DEFENDANT BE ORDERED TO PAY THE FILING FEE FOR THE SUIT/COMPLAINT NOW AT BAR, PURSUANT TO 5 U.S.C. § 552 (a) (4) (E).

I PRAY FOR ANY OTHER RELIEF WHICH THIS HONORABLE COURT DEEMS FIT TO GRANT ME.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on

JULY 3, 2008
(Date)

21136-018

[Signature]

(Prisoner's Original Signature)

U.S. PENITENTIARY MAX

P.O. BOX 8500

FLORENCE, CO 81226

Exhibit A

AlphaSmart Manager User's Guide

AlphaSmart, Inc.
20400 Stevens Creek Blvd., Suite 300
Cupertino, CA 95014
Phone (888) 274-0680 (inside U.S.)
(408) 252-9400 (international)
Fax (408) 252-9409
E-mail: info@alphasmart.com
www.alphasmart.com

Chapter One

1

Introduction

AlphaSmart Manager helps teachers and other AlphaSmart users manage files and software on as many as 30 AlphaSmart 3000s connected to an AlphaHub.

With AlphaSmart Manager, you can:

- Define the contents of AlphaWord files and send them to connected AlphaSmarts.
- Retrieve AlphaWord files from connected AlphaSmarts and save them individually or collectively.
- Maintain security by setting passwords in three different areas.
- Keep track of the current number and status of connected AlphaSmarts.

With AlphaSmart Manager and AlphaHub, you can configure an entire classroom set of up to 30 AlphaSmart 3000s with the same files—story starters, language arts exercises, math drills—in one easy operation. Retrieving files from all 30 AlphaSmarts takes just a few mouse clicks instead of a separate operation for each AlphaSmart. In addition, you can decide how you want the AlphaSmarts set up to begin an activity, and save those settings to be easily reused at any time.

Chapter Four

4

Connecting to the AlphaHub

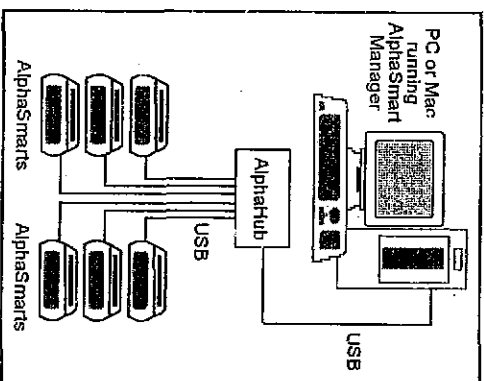
To use AlphaSmart Manager, you must have a Universal Serial Bus (USB)-capable computer connected to your set of AlphaSmart 3000s through an AlphaHub.

An AlphaHub is

AlphaSmart's multiport management device to which you can connect a PC or Macintosh (running AlphaSmart Manager) and up to 30 AlphaSmarts. All connections are made through USB ports.

Checking Connections

AlphaSmart Manager includes a status bar that shows which AlphaHub ports have an AlphaSmart connected to them. This status bar can be displayed using the Check Connection function.



When you click the "Configure AlphaSmarts" button, the settings and file contents defined in your .act file are downloaded to AlphaSmarts through the AlphaHub.

Retrieving Files from AlphaSmarts

So far, we've discussed downloading settings and files in the form of a configuration for a classroom activity. But what about turning that around? Once your students have completed the activity, how do they get their modified files back to you for grading or discussion? Simple. Just *retrieve* them.

While your students can still individually transfer files to a computer and save them there, the "Retrieve Files" option allows you to retrieve files from all your students' AlphaSmarts to your computer in one operation. Files are retrieved as simple text files (.txt) and can be opened, viewed, edited, and saved. Note: No text file will be created for an empty Alpha Word file. Because you may be retrieving as many as 240 different files (30 AlphaSmarts x 8 Alpha Word files each), AlphaSmart Manager helps you organize them by copying the entire hierarchical structure from the AlphaSmarts to your hard drive.

For example, when you choose the "Save All" option, all files downloaded from AlphaSmart #1 will be saved to the "AlphaSmart #1" folder; files from AlphaSmart #2 will be saved to the "AlphaSmart #2" folder, and so on. The number assigned corresponds to the AlphaHub port number to which the AlphaSmart is attached.

Tip: You can number your AlphaSmarts 1-30, and assign each student a number to use throughout the year. When students finish working with the AlphaSmarts, they connect them to the AlphaHub cable with the matching number. This will result in the folder number described above matching the number on the AlphaSmart.

To retrieve files from AlphaSmarts

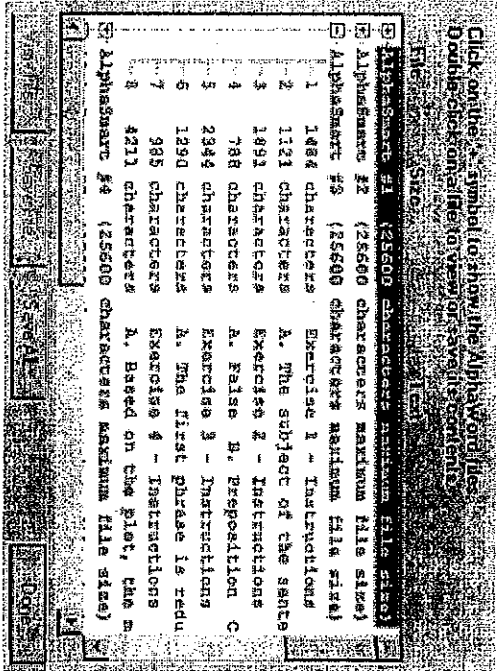
1. Make sure your AlphaHub is powered on.

2. In AlphaSmart Manager, click **Retrieve Files** in the Hub menu.



Hint: Windows users can click the Retrieve Files icon on the toolbar rather than going through the Hub menu.

Click on the "+" symbol to show the AlphaWord files.
Double-click on a file to view or save it.



You can click the "+" sign to show an AlphaSmart's individual files. This example shows an expanded view of AlphaSmart #3.

3. The download begins and a progress box is displayed.

4. When all files have been retrieved from connected AlphaSmarts, the following dialog box is displayed.

5. Choose an option.

- **View File** – Lets you select and view the files individually without saving them to your hard drive. (This button is enabled when you select a file.)
- **Save File** – Saves an individual file to your hard drive. (This button is enabled when you select a file.)
- **Save All** – Saves all files—in their hierarchical structure—to your hard drive. This process may take in excess of 45 minutes if all eight files on all 30 AlphaSmarts are full and of the maximum size. You will discover what is normal for your usage, but as a rule of thumb for more typical configurations, allow at least ten minutes to retrieve files from 30 AlphaSmarts.

6. When you're finished viewing and saving files, click **Done**.

Exhibit B

**U.S. Department of Justice
Federal Bureau of Prisons
North Central Regional Office**

**Regional Administrative Remedy Appeal
Part B - Response**

Admin Remedy Number: 469057-R1

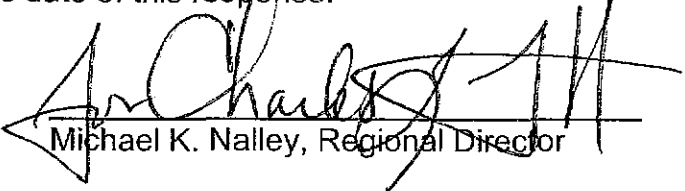
This is in response to your Regional Administrative Remedy Appeal dated October 24, 2007, in which you allege the book titled *Alpha Smart Manager* was inappropriately rejected. For relief, you request the book be held by your Unit Team and made available to you when needed.

We have reviewed your appeal and the Warden's response dated October 15, 2007. The Warden's response adequately addresses your concerns. Specifically, Program Statement 5266.10, Incoming Publications, gives the Warden the authority to reject a publication if it is determined to be detrimental to the security, good order, or discipline of the facility. In this case, the publication titled *Alpha Smart Manager* was rejected due to the fact that it contained information about a computer program that is utilized by the Bureau of Prisons. An inmate's access to information contained in the book may lead to a breach in the security of that computer program. There is no policy or procedure in place that would allow for the Unit Team to store the publication and make it available to you when needed.

Based on the above information, your Request for Administrative Remedy is denied.

If you are dissatisfied with this response, you may appeal to the Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. Your appeal must be received in the Office of General Counsel within 30 days from the date of this response.

11/21/07
Date


Michael K. Nalley, Regional Director